

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1979 of 1989

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

K.D.JAIN

Versus

LIFE INSURENCE CORP.OF INDIA

Appearance:

Petitioners Nos. 1 to 5 and 7 to 11 served.

Petitioner No. 6 unserved.

MR AK CLERK for Respondents.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/03/98

ORAL JUDGEMENT

All but petitioner No. 6 have been served.
Interest of petitioner No. 6 is also adequately represented by rest of the petitioners. Petition can, therefore, proceed in absence of petitioner No. 6.

2. Petitioners before this Court are the Development Officers serving under the Life Insurance Corporation of India, respondent No. 1 herein (hereinafter referred to as "the Corporation"). Respondent No. 2 to 4 are the Local Officers of the Corporation. It appears that the association of the Officers i.e. National Federation of the Insurance Field Workers of India had pressed certain demands of the Officers and in furtherance of such demands, they called for nation wide agitation against the Corporation. To implement their nation wide agitation, a call for lodging Dharna on 8th February, 1988 was given. The petitioners herein, the Development Officers, with a view to participating in Dharna Programme, on 6th February, 1988, made applications for leave on 8th February, 1988. Without the said leave having been sanctioned, such Officers remained absent from service on 8th February, 1988 and participated in Dharna. The leave applied for was refused on 4th March, 1989 and the concerned officer was informed that his absence on 8th February, 1988 would be treated as Extraordinary Leave and the wages for the same would be deducted from the salary for the month of March, 1989. Feeling aggrieved, the petitioners have preferred this petition.

3. In the present petition, what is challenged is the communication of 4th March, 1989 (Annexure "C" to the petition) refusing application for casual leave made by Shri K.D.Jain, the petitioner No. 1 herein. Thus, the order made in respect of the petitioner No. 1 alone is the subject matter of challenge in this petition. The petitioners have prayed for permission to prosecute the petition in representative capacity under Order 1, Rule 8 of the Code of Civil Procedure, 1908, representing the Development Officers of Ahmedabad Division. However, it appears that the said prayer was not pressed. No such permission has been granted by the Court. No public notice as envisaged under Order-1, Rule-8 of the Code has been given. In the circumstances, this petition cannot be treated as a petition in representative capacity and since the order made in respect of the petitioner No. 1 alone is challenged, the petition is restricted to petitioner No. 1 alone.

4. The service conditions of the employees of the Corporation are governed by the Statutory Regulations framed by the Corporation. The relevant regulations are reproduced in paragraph 6 of the petition. Regulation 60B deals with the kinds of leave. Regulation 61 deals with the general conditions governing the grant of leave. Regulation 61 provides, inter-alia, that the leave cannot

be claimed as a matter of right and that the sanction of leave may not be presumed and the leave asked for should not be availed of unless it has been specifically sanctioned.

In view of the aforesaid provisions, it is evident that unless the leave is sanctioned, the Officer cannot avail of the leave applied for by him. In the present case, it is undisputed that though the application was made on 6th February, 1988, no order was made on the said application and without the leave being sanctioned, the petitioner had availed of the same i.e. he remained absent from service and participated in Dharna. Such concerted action on the part of the Officer of the Corporation should necessarily amount to strike for one day.

5. Mr. Clerk, the learned advocate appearing for the Corporation has submitted that the question whether an employer has a right to deduct the wages for the period of strike is no more res-integra. He has referred to the judgment of the Supreme Court in the matter of Bank of India vs. T.S. Kelawala and others [1990 (4) SCC page 744]. In the said matter, the Court invoked the principle of "No work No Pay" and held that notwithstanding the absence of term in the contract of employment or of provision in the service rules or regulations, an employer is entitled to deduct the wages for the period that the employee refused to work although the work is offered to them. In the matter of Syndicate Bank and others vs. K. Umesh Nayak and others [1994(5) SCC 574], again, the principle of 'no work no pay' was invoked. The Court held that the wages during the strike period would be payable only if the strike is both legal and justified but not payable if the strike is legal but not justified or justified but illegal. Again, same principle of no work no pay was invoked in the matter of HMT Ltd. vs. HMT Head Office Employees and others [1996(11) SCC 319].

6. Keeping in view the judgments of the Supreme Court referred to hereinabove, the action of the Corporation in deducting the wages for the period of strike cannot be interfered with. Further it appears that the petitioners and others applied for casual leave in answer to the call given by the National Federation without even inquiring into the justification of such call. Unless a court of competent jurisdiction holds that the mass casual leave and ensuing Dharna by the Development Officers were both legal and justified, they cannot be entitled to the wages for the period of strike.

The petitioner is, therefore, not entitled to the wages for 8th February, 1988.

7. Petition is, therefore, dismissed. Rule is discharged. Ad-interim order made on 20th March, 1989 is vacated. There shall be no order as to costs.

Vyas